

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 13, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Consent to Extension of Lease Term, General Lease No. S-4306, Sears, Roebuck and Co., Lessee, Lot 2, Hilo Industrial Development, Pohaku Street Section, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-58:04.

APPLICANT AND REQUEST:

Improvements financed by the Lessee, Sears, Roebuck and Co., pursuant to Hawaii Revised Statutes, Section 171-36(b), in the amount of \$38,700. In order for Lessee to amortize these expenditures, the Lessee is requesting an extension of General Lease No. S-4306 of 5 years, commencing on June 30, 2010 and expiring on June 29, 2015 for an aggregate term (initial term plus one extension) of 45 years.

LEGAL REFERENCE:

Sections 171-22 and 36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea situated at Lot 2, Hilo Industrial Development, Pohaku Street Section, Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-58:04, as shown on the attached map labeled Exhibit A.

AREA:

14,421 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

General industrial purposes.

TERM OF LEASE:

Original term of 40 years, commencing on June 30, 1970 and expiring on June 29, 2010.

Requested extension of 5 years commencing on June 30, 2010, and expiring on June 29, 2015.

ANNUAL RENTAL:

Current rent is \$9,600, due in quarterly installments of \$2,400 on the 30th day of March, June, September and December of each year.

RENTAL REOPENINGS:

Reopenings in the original term were at the end of the 20th and 30th years of the term, or on June 30, 1990 and June 30, 2000. The last rental reopening occurred on June 30, 2000.

The reopening for the extended term shall be on May 13, 2010 (immediate reopening).

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

The requested lease extension involves no change in or expansion of the use of State lands that presently exists under General Lease No. S-4306. Rather, the Applicant Sears, Roebuck and Co., intends to continue its present operations at the premises through the extension period. As such, staff believes that the proposed lease extension would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

SELF-FINANCED IMPROVEMENTS:

Applicant hired a licensed contractor to replace the roof the building on the lease premises in 2008 at a cost of \$26,200. See Exhibit B attached. In addition, Applicant has obtained a quote for painting the building and adding lot striping to the parking lot at a cost of \$12,500. See Exhibit C attached.

Staff has reviewed Applicant's specifications for the roof replacement and painting, as well as other documentation submitted by Applicant in support of its request for a lease extension, including Forms 10-K filed for Sears Holding Corporation, which is the parent company of Applicant, with the Securities and Exchange Commission for the last three years, a consulting letter from a certified appraiser regarding the improvements on the premises, and also conducted a site inspection of the premises. The roof replacement under and painting relate to the lease premises.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal for the immediate rental reopening.
- 2) Complete its painting and parking lot striping work in the amount of at least \$12,500 and submit to Land Division staff receipts verifying payment for the painting work by June 30, 2011.

REMARKS:

On June 30, 1970, a 40-year lease covering the subject land was sold at public auction to Hacker and Scheiderich, a partnership, as the highest bidder. The partnership and the State executed General Lease No. S-4306 in September 1970, and the partnership thereafter constructed a 4,512 sf warehouse building on the property in accordance with plans approved by the Chairperson of the Board of Land and Natural Resources. Land Division files show that construction of the warehouse was completed as of January 1973.

Through mesne assignments with Land Board consent, the lease was assigned to Applicant pursuant to an assignment of lease dated May 10, 1993, and approved by the Board at its meeting of May 28, 1993, Item F-1-b. The Chairperson executed the consent to assignment on June 22, 1993. In accordance with plans approved by the Chairperson,

Applicant renovated the interior of the building to meet its needs, and added a covered carport with an area of 1,702 feet. Since 1993, Applicant has occupied and used the premises as Sears Service Center, which provides small engine repair services and parts.

Applicant now requests a 5-year extension of the lease to allow it to amortize the cost of the roof replacement completed in 2008 at a cost of \$26,200, and the proposed painting of the exterior of the warehouse and the addition of striping to the parking lot at a cost of \$12,500. Although Applicant is eligible for an extension of up to 15 years, Applicant's normal business practice is to limit lease commitments to 5 years. Applicant may seek additional extensions in the future should business circumstances warrant such action.

Applicant submitted an invoice for the roof replacement from a licensed contractor at a total cost of \$26,200 (Exhibit B), as well as a quote for the painting work at a cost of \$12,500 (Exhibit C). Applicant also submitted a consulting letter from a certified real estate appraiser, Patrick Y. Taketa, dated April 6, 2010, which estimated that the remaining economic life of the improvements is between 37 to 43 years.

Applicant's rent, performance bond (\$17,346), liability insurance and fire insurance are current.

In the past five years, one notice of default was issued to Applicant on January 30, 2009 for failure to post required liability insurance. The default was timely cured.

During a site inspection conducted on April 21, 2010, staff noted that the premises are generally in good to average condition, which would be complemented by the work Applicant proposes as part of its lease extension request.

No agency comments were solicited on the request because it involves a lease extension, and not a new disposition.

Staff recommends the extension be granted based on the materials Applicant has submitted for the roof replacement, painting and the remaining economic life of the improvements. Although Applicant is seeking a 5-year extension at present, it is possible Applicant will seek additional extensions not to exceed an aggregate lease term of 55 years. Parcels in the vicinity of the subject parcel are encumbered by DLNR leases that expire in 2025 and 2030, and staff believes that having all the leases in the area expire at or around the same time will facilitate comprehensive long-range planning for all the parcels in the area.

RECOMMENDATION:

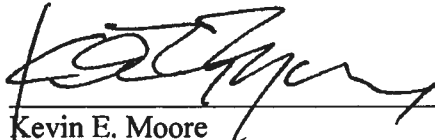
That the Board, subject to the Applicant fulfilling the Applicant requirement listed above:

1. Authorize the extension of General Lease No. S-4306 under the terms and

conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. Applicant shall complete its exterior building painting and parking lot striping in the amount of at least \$12,500 and submit to Land Division staff receipts verifying payment for this work by June 30, 2011, or the lease extension shall be subject to cancellation;
- B. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other conditions as may be prescribed by the Chairperson, which are in the best interests of the State.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



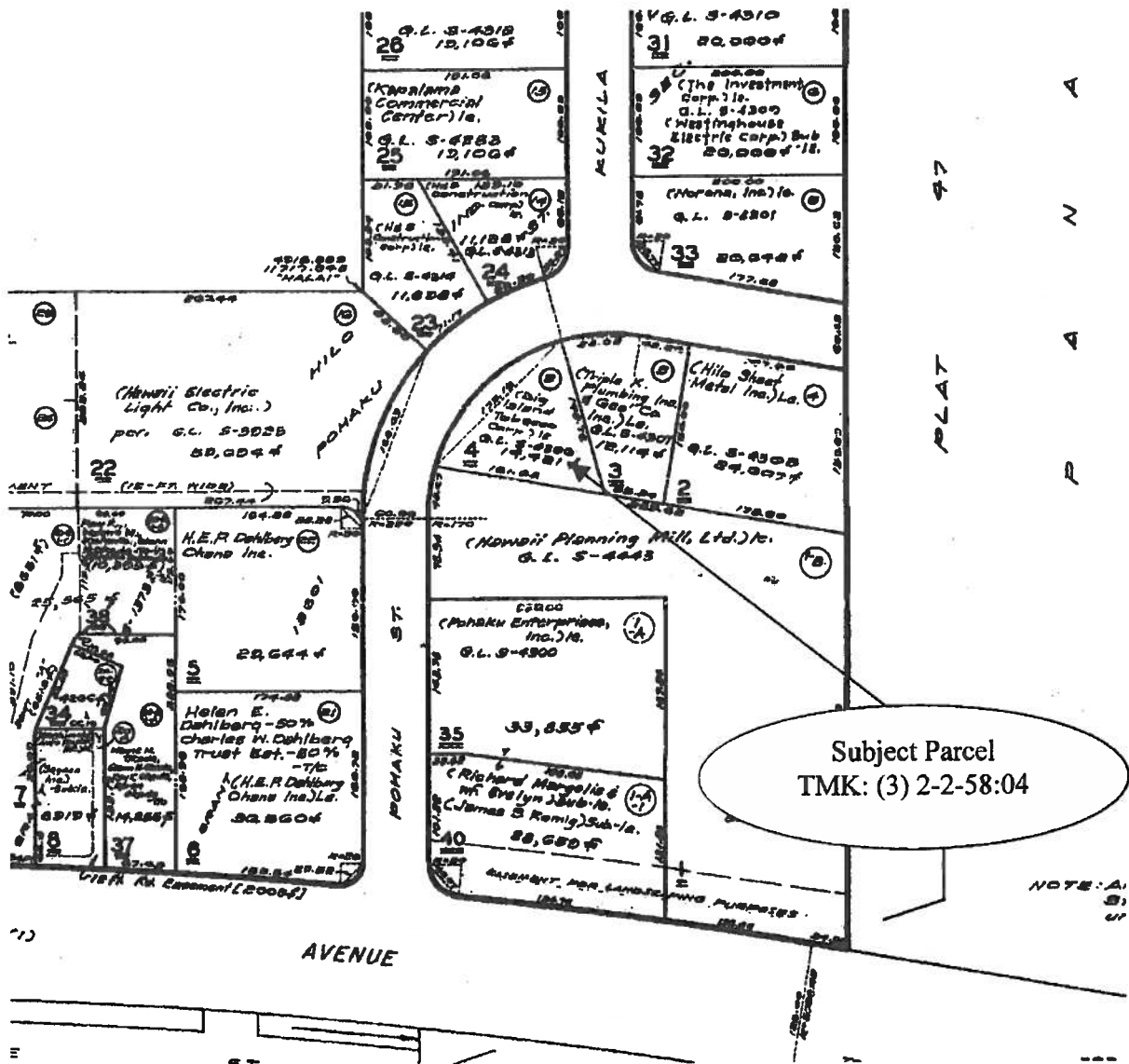


EXHIBIT A

Yama's Roofing, Inc.

Lic. C-21133
45 Pohaku St. #202
Hilo, HI 96720

Invoice

Date	Invoice #
10/6/2008	2958

(808) 961-9248	Kona: (808) 329-3044
Bill To	
Sears Parts & Repair Center c/o Magie Valderama 50 Pohaku St. Hilo, HI 96720	

Prop#	Date Completed	Job No.	Job Location
Same	10/5/2008	#1952	Same
Description			Amount
Reroof top roof as specifeid on proposal. - Note: Gutter installed on top roof at NO ADDITIONAL CHARGE.			26,200.00

Please make all checks payable to Yama's Roofing, Inc.

Due upon receipt.

*Penalty fee assessed on accounts outstanding beyond (7) days.

NO WARRANTY ON REPAIRS

If you have any questions concerning this invoice,
please call (808) 961-9248

Total	\$26,200.00
Payments/Credits	\$0.00
Balance Due	\$26,200.00

EXHIBIT B

PROPOSAL



YAMA'S ROOFING INC.

45 Pohaku Street, #202, Hilo, HI 96720

Phone/Fax (808) 961-9248

Kona (808) 329-3044

LIC # C-21133



Proposal Submitted To: Sears Repair Center	Phone: (808) 933-3038	Date: 7/30/08
Street: 50 Pohaku St.	Job Name: Same	
City, State and Zip Code: Hilo, Hawaii 96720	Job Location: Same	
Contact: Magle	Property #:	Fax: 933-3038

We hereby submit specifications and estimates for:

REROOF TOP ROOF

Tear off existing metal roofing (approx. 5200 sq. ft.) and dispose of refuse.
 Replace any rotten purlins (at our own discretion) with treated lumber.
 Install Kynar-500 coated, 24 gauge, zincaluminum Commercial Roofing from HPM.
 Fabricate and install 96 ft. of flashing for parapet wall with same materials for the roof.

Secure with stainless steel screws.

The installation will be done on a Sunday.

NO ADDITIONAL CHARGES FOR REPLACING ROTTEN LUMBER.

7-year one time transferable warranty on workmanship/ 20-year limited warranty on roofing panels from HPM.

TERMS OF PAYMENT: NET 30 DAYS

We hereby propose to furnish material and labor, complete in accordance with above specifications, for the sum of:

Twenty six thousand, two hundred dollars and no cents.....\$26,200.00

PAYMENT AS FOLLOWS: Balance due upon completion / Net 30 days

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. Warranty is void in cases of hurricanes or winds in excess of sixty-mph winds. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance. Customer has read and will abide by contract terms.

Authorized
Signature:

Brian P. Peterson/ RME

Note: This proposal may be withdrawn by us if not accepted within thirty (30) days.

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. I/We understand that Final Payment is due upon completion. A Penalty Fee will be assessed on all accounts outstanding beyond 7 days at 1.5% Per Month which is equal to 18% Per Annum. If payments are not made when due, I/We understand that, in addition to the amounts owed, I/We will be responsible for payment of reasonable attorney's fees, not to exceed twenty-five percent (25%) of the unpaid balance plus costs if we retain an attorney or collection agency, regardless of whether or not a lawsuit is filed. I/We have read and will abide by the contract terms.

Date of Acceptance:

7/31/08

Signature: _____

Magle Valderama

Signature: _____



YAMADA PAINT
CONTRACTING INC.

16-212 Melekauiwa Place
Keeau, Hawaii 96749
Phone (808) 966-4492 Fax (808) 966-4244

PROPOSAL

To:

Sears Roebuck and Co.
Attn: Allan
111 E Puainako Street
Hilo HI 96720

PHONE	DATE
FAX 981-4082	April 23, 2010
JOB NAME / LOCATION Sears Service Ctr Ext Repaint 50 Pohaku Street Hilo HI 96720	
JOB NUMBER 2019	JOB PHONE 933-3045

We hereby submit specifications and estimates for:

Exterior Repainting of Service Center (Roof,Eaves,Posts not included)

Surface preparation

- 1) pressure and/or mildew wash all surfaces to be coated.
- 2) treat all rust with rust converter.
- 3) prime all rust with rust inhibitive primer.
- 4) remove all loose or peeling paint.
- 5) treat all mildew as necessary.
- 6) caulk all joints and cracks as necessary.
- 7) spackle/putty all open nail heads, holes, etc.
- 8) spot prime all bare areas.

Finishes

T1-11 Siding - apply 1 coat primer, 2 coats enamel finish.

CMU Block Walls - apply 1 coat elastomeric waterproofing, apply 2 coats enamel finish.

Parking lot Striping add --- \$ 900.00 (no guardrail)

* owner to obtain access permission from side lots for YP manlifts.

* work to be done during normal working hours.

Thank you!

**We Propose hereby to furnish material and labor - complete in accordance with the above specifications,
for the sum of: \$12,500.00**

Payment to be made as follows: **50% due upon acceptance**
 50% due upon completion

Thank you!

All material is guaranteed to be as specified. All work to be completed in a professional manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Worker's Compensation insurance. Contractor has the right to resolve alleged construction defects prior to commencing with any litigation in accordance with Section 672 E-11.

Authorized
Signature: _____

Note: This proposal may be withdrawn
by us if not accepted within 30 days.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. I (we) acknowledge that all lien rights have been explained. Bonding is available. If you would like to bond this project, inform us in writing and add 3% of the proposal amount.

Signature: _____

Signature: _____

Date work to commence and duration of project to be determined upon acceptance of proposal

Date of Acceptance: _____

EXHIBIT C